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FOR A FRAMEWORK CONVENTION ON CLIMATE CHANGE
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Item 3 (a) and (b) of the provisional agenda

MATTERS RELATING TO ARRANGEMENTS FOR THE FINANCIAL MECHANISM AND FOR TECHNICAL AND FINANCIAL SUPPORT TO DEVELOPING COUNTRY PARTIES

IMPLEMENTATION OF ARTICLE 11 (FINANCIAL MECHANISM), PARAS. 1-4

CONSIDERATION OF THE MAINTENANCE OF INTERIM ARRANGEMENTS REFERRED TO IN ARTICLE 21, PARA. 3

Issues to be addressed by the Committee

Note by the interim secretariat

I. SCOPE OF THE NOTE

1. At the eighth session of the Committee, Working Group II decided to focus its work on the implementation of Article 11 (Financial Mechanism) and considered, in particular, (a) policies, programme priorities and eligibility criteria; (b) modalities for the functioning of operational linkages between the Conference of the Parties (COP) and the operating entity or entities entrusted with the operation of the financial mechanism (hereafter referred to as "the operating entity or entities"); (c) approaches to the determination of "agreed full incremental costs"; and (d) elements relevant to the assessment of needs for funding from the Global Environment Facility (GEF) for activities related to the Convention in the three years 1994-1996. The conclusions adopted by the Committee are contained in its report, document A/AC.237/41, paras. 82-92.

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2. The present note, prepared to facilitate the work of the Committee at its ninth session, takes stock of progress achieved in the above-mentioned areas and identifies issues that need to be addressed in the areas of (a) guidance from the COP to the operating entity or entities; (b) positions that the COP could adopt regarding modalities for the operational linkages between the COP and the operating entity or entities; and (c) institutional questions.

3. The present note is supplemented by two addenda, one on approaches to the determination of agreed full incremental costs, and the other on the outcome of the replenishment and restructuring process of the GEF.

II. GUIDANCE FROM THE CONFERENCE OF THE PARTIES TO THE OPERATING ENTITY OR ENTITIES

4. At its eighth session, the Committee considered that in order to implement the provisions contained in the Convention further work would be needed on policy guidance regarding the scope of the financial mechanism (relevant elements of Articles 4.1, 4.3, 4.4, 4.5, 4.8, 11.1, 11.5), eligibility criteria other than those agreed in subparagraph 84(ii) of document A/AC.237/41 and programme priorities other than those agreed in subparagraph 84(iii) of the same document (A/AC.237/41, para. 85).

5. The Committee also resolved to give priority at its ninth session to consideration of the implementation of Article 11 (Financial Mechanism) and to the adoption of such recommendations for decisions by the COP as might be necessary, in the context of the mandate of the COP, on guidance to the operating entity of the financial mechanism concerning its policies, programme priorities and eligibility criteria related to the Convention, and on the determination of "agreed full incremental costs" (A/AC.237/41, para. 91).

A. Eligibility criteria

6. On eligibility* criteria, the Committee achieved some progress and reached general agreement on the following:

> "Eligibility criteria will apply to countries and to activities and will be applied in accordance with Article 11.1, 11.2 and 11.3. Regarding eligibility of countries, only countries that are Parties to the Convention would be eligible to receive funding upon the entry into force of the Convention. In this context, only developing country Parties would be eligible to receive funding through the financial mechanism, in accordance with Article 4.3." (A/AC.237/41, para. 84)

7. The Committee may wish to consider whether it envisages the development of additional eligibility criteria for countries.

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* "Eligibility" is defined as "fit or worthy to be chosen" (Chambers's Twentieth Century Dictionary, Revised Edition, 1971).

8. Concerning eligibility of activities, Article 4.3 envisages funding for two broad categories of activities:

(a) Those related to obligations under Article 12.1 to communicate information for which the "agreed full costs" are to be met; and

(b) Measures covered by Article 4.1 for which the "agreed full incremental costs" are to be met under specified conditions.

9. Whilst there appeared to have been consensus on the eligibility of activities envisaged under Article 12.1, it was not clear from the discussions whether all measures referred to in Article 4.1 were unanimously considered eligible for funding through the financial mechanism. The same applies to Article 4.4 which establishes a commitment on the part of the developed country Parties and other developed Parties included in Annex II to assist those developing countries that are particularly vulnerable to the adverse effects of climate change in meeting the costs of adaptation to them. In the light of these provisions, the Committee may wish to consider:

(a) Whether the adaptation measures and activities mentioned in Article 4.1 are eligible for funding through the financial mechanism;

(b) Whether the measures and activities covered by Article 4.4 are eligible for funding through the financial mechanism;

(c) Whether the resolution of question (b) could be achieved through the designation of different entities for the operation of the financial mechanism in this regard. (See also para. 24, below); and

(d) If some of the measures mentioned in Article 4.1 and 4.4 are not eligible for funding through the financial mechanism, how the commitments to provide funding for their implementation will be discharged.

B. Programme priorities

10. Some progress was made in the determination of priorities. At the eighth session, it was agreed that priority should be given by the financial mechanism to the funding of the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12.1 regarding communication of information. It was also agreed that in the initial period, emphasis should be placed on enabling activities undertaken by developing country Parties, such as planning and endogenous capacity building (including institutional strengthening, training, research and education), that will make it possible to implement larger-scale response measures. The Committee considered that further work would be needed on programme priorities other than those mentioned above (A/AC.237/41, para. 85). The Committee may wish to consider setting additional priorities regarding types of activities.

11. Article 4.5 deals with the transfer, or access to, environmentally sound technologies and know-how. An issue in this regard may be the identification of environmentally sound technologies and know-how deserving priority support, particularly as regards their application in developing country Parties. The Committee may wish to recommend to the COP a process for such identification, possibly involving the Subsidiary Body for Scientific and Technological Advice.

C. Policies

12. Regarding policy guidance to be provided by the COP to the operating entity or entities, the conclusions adopted by the Committee at its eighth session do not go beyond the language contained in the Convention. The discussion, however, clarified that areas listed in Article 11.3(a), (b), (c) and (d), being areas in which the COP and the entity or entities are to agree upon arrangements, are excluded from the field of policy guidance to be unilaterally given by the COP to the entity or entities. These matters are dealt with in section III, below.

13. The Committee may wish to envisage which issues other than eligibility criteria and programme priorities could be the subject of policy guidance from the COP to the entity or entities. In that connection, the Committee, at its eighth session, considered that further work would be needed on policy guidance regarding the scope of the financial mechanism (see relevant elements of Articles 4.1, 4.3, 4.4, 4.5, 4.8, 11.1, 11.5).

14. In Article 4.3 the expressions "agreed full costs" and "agreed full incremental costs" are utilized. The Committee may wish to consider whether such costs should be determined entirely through a bilateral discussion between the developing country concerned and the entity or entities, or whether some guidelines, criteria or methodologies for the determination of such costs should be established by the COP. Such guidelines, criteria or methodologies would provide a framework within which bilateral discussions would take place. It may be recalled in that connection, that the Committee decided to address the issue of guidance on the determination of "agreed full incremental costs" at its ninth session (A/AC.237/41, para. 91).

15. The Committee may wish to consider the issue of guidance that the COP may provide to the entity or entities regarding activities funded through them outside the financial mechanism of the Convention. Such activities may be carried out to implement a funding commitment under the Convention (for example, support regarding transfer of technology to Parties other than developing country Parties as provided for in Article 4.5), or to assist a Party that is not eligible for funding under the financial mechanism in taking measures to limit emissions.

16. The Committee may also wish to consider:

(a) How the concerns expressed in Article 4.8 and 4.9 could be reflected in terms of programmes;

(b) Whether the COP could provide guidance on the distribution of funds available to the operating entity or entities for climate change among groups of countries (for example, eligible and non-eligible) and regions; and

(c) Whether the COP should give guidance to the operating entity or entities on when funding is to be provided in the form of grants and when in the form of concessional finance.

III. MODALITIES FOR THE FUNCTIONING OF OPERATIONAL LINKAGES BETWEEN THE CONFERENCE OF THE PARTIES AND THE OPERATING ENTITY OR ENTITIES

17. At its eighth session, the Committee reached preliminary conclusions on some aspects of the modalities for the functioning of the operational linkages between the COP and the operating entity of the financial mechanism. Issues relating to reporting, accountability, conformity and reconsideration of funding decisions were addressed in the preliminary conclusions adopted by the Committee (A/AC.237/41, para. 86). As these modalities are to be agreed between the COP and the operating entity or entities, these preliminary conclusions would constitute positions that the COP could adopt in seeking arrangements with the operating entity or entities.

18. The Committee decided that further work will be needed on Article 11.3(d) in conjunction with its chapeau. This deals with modalities for the determination, in a predictable and identifiable manner, of the amount of funding necessary and available for the implementation of the Convention and with the conditions under which that amount shall be periodically reviewed in accordance with the provisions of Article 11.3 (A/AC.237/41, para. 87).

19. Arrangements for cooperation between institutions established by the Convention, that is, the secretariat and the subsidiary bodies and their counterparts in the operating entity or entities, would support the operational linkages established. The Committee may wish to develop its position on these arrangements.

IV. INSTITUTIONAL QUESTIONS

A. GEF restructuring

20. Article 21.3 entrusts to the GEF, on an interim basis, the operation of the financial mechanism referred to in Article 11. Article 21.3 also calls for the GEF to be restructured and its membership made universal to enable it to fulfil the requirements of Article 11. Article 11.2 provides that the financial mechanism shall have an equitable and balanced representation of all Parties within a transparent system of governance. Article 11.3 addresses an agreement between the COP and the entity or entities on the functioning of operational linkages between them. Article 11.4 calls on the COP, at its first session, to make arrangements for the implementation of Article 11.3(a), (b), (c) and (d) and, at the same session, to review the interim arrangements entrusting the GEF with the operation of the financial mechanism on an interim basis and to decide whether these interim arrangements shall be maintained. Within four years thereafter the COP is to review the financial mechanism and take appropriate measures.

21. On completion of the restructuring of the GEF, the Committee may wish to consider whether the restructured GEF corresponds to characteristics outlined in Articles 11.2 and 21.3 and advise the COP in that regard.

B. Agreement between the COP and the operating entity or entities

22. On arrangements between the COP and the operating entity, the legal opinion requested from the United Nations Office of Legal Affairs on appropriate arrangements which might be entered into between the COP and the operating entity has been received, and concludes as follows:

> "Having reviewed the questions raised by the [secretariat of the] INC/FCCC, this Office is of the opinion that in accordance with the relevant provisions of the United Nations Framework Convention on Climate Change, the Conference of the Parties (COP) has the legal capacity, within the limits of its mandate, to enter into agreements and other arrangements with entities, such as states, intergovernmental and non-governmental organizations and bodies, which also have the authority to do so. The Global Environment Facility, which was established on 14 May 1991 by resolution 91-5 of the Executive Directors of the World Bank, does not, at the present time, have the legal capacity to enter on its own into agreements or arrangements with other entities. If the COP wanted to use the present GEF as an operating entity, it would have to enter into an agreement or an arrangement with the World Bank as the parent organization. It is not possible at this stage to predict with any certainty whether a restructured GEF will have the legal capacity to enter on its own into agreements or other arrangements with entities such as the COP. Likewise, it is not feasible to determine in general which arrangements should be considered as appropriate between the COP and a hypothetical operating entity. As far as the question of the most appropriate arrangement between the COP and the GEF, as an operating entity, is concerned, the answer to it depends on the status and structure of the new GEF."

23. The Committee may wish to consider the matter in the light of that initial opinion and of any other opinion that might be forthcoming once arrangements for a restructured GEF are concluded. The Committee may also wish:

(a) To decide on arrangements for agreeing with the entity or entities on modalities for the functioning of operational linkages;

(b) To complete the formulation of its position regarding Article 11.3; and

(c) Provided that the advice referred to in para. 21, above is positive, to initiate a process of discussions with the GEF in preparation for an agreement between the COP and the GEF.

C. Involvement of other entities in the operation of the financial mechanism

24. Article 11.1 provides that the operation of the financial mechanism shall be entrusted to one or more existing international entities. It may be found useful to assign different tasks under the financial mechanism to different entities on the basis of their respective fields of activity. The following issues could be addressed in that connection:

(a) On what criteria and at what stage should entities other than the interim entity be given consideration?

(b) Could, for instance, additional entities be entrusted with the operation of the financial mechanism only on the occasions mentioned in Article 11.4 for the review of arrangements, or also at other times?

(c) What arrangements (for example, involvement of a subsidiary body) would be required to provide for an effective interaction between the COP and the entities entrusted with the functioning of the financial mechanism?

D. Funding through bilateral, regional and other multilateral channels

25. Finally, Article 11.5 discusses funding through bilateral, regional and other multilateral channels. The Committee may wish to consider what role the COP is to play in monitoring and providing guidance, if any, for such funding operations, and what arrangements may be needed with institutions implementing them. Regarding monitoring, it may be recalled that Article 12.3 provides that each developed country Party and each other developed Party included in Annex II shall incorporate in its communication to the COP details of measures taken in accordance with Article 4.3, 4.4 and 4.5 relating to finance and the transfer of technology.